



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 21.10.2005
COM(2005) 518 final

COMMUNICATION FROM THE COMMISSION

on an EU common methodology for assessing administrative costs imposed by legislation

{SEC(2005)1329}

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The European Council of 22 and 23 March 2005 requested “the Commission and the Council to consider a common methodology for measuring administrative burdens with the aim of reaching an agreement by the end of 2005”. It stressed that “agreement should take advantage of the results of the Commission's pilot projects” and that “initiatives taken in the context of improving the regulatory environment must not themselves turn into administrative burdens.” (Point 24, Presidency conclusions).

The present Communication outlines an EU common methodology and proposes next steps for its introduction. The proposed model is based on the findings of the pilot phase launched in early April and presented in the Staff Working document in Annex¹.

1. ADMINISTRATIVE BURDEN AND BETTER REGULATION

Modern society would function poorly without legislation and a functioning court system. By setting rights and obligations, laws protect citizens, customers, workers and businesses against abuses, negligence and unethical behaviour. In the particular case of enterprises, they are a precondition for fair competition and hence for competitiveness. This is the *raison d'être* of a large part of EU legislation, introduced to correct market failures and ensure a level playing field at continental level.

That protection can often only be secured through obligations to provide information and report on the application of legislative norms. Administrative obligations should therefore not be presented as mere ‘red tape’, a term normally reserved for needlessly time-consuming, excessively complicated or useless procedures². Nor should EU administrative obligations be presented as a mere cost factor, as it often replaces 25 different national legislations and thus decreases operating costs at EU level. On many issues, European business associations themselves have continued to ask for targeted harmonisation of rules as the best way forward in term of simplification. Moreover information requirements such as conformity testing and certification also provide crucial indication on the boundaries of business liability and remediation, which is not negligible viewed against the background of what is sometimes described as a growing “compensation culture”. Insofar as more liberty entails more responsibility, the suppression of certain legal obligations could result in bigger judicial and arbitration costs.

Without questioning the need for public authorities to pursue policy objectives through EU legislation, there is however scope for considering more carefully its design at all stages of the legislative procedure and implementation by Member States. Regulatory reform is needed in

¹ Staff Working Document, *Developing an EU common methodology for assessing administrative costs imposed by EU legislation - Report on the Pilot Phase (April– September 2005)*, SEC(2005) 1329.

² Examples such as the obligation to publish annual accounts or to present cars for annual inspection illustrate clearly how indispensable administrative obligations can be.

order to adapt to changes inside and outside the Union. Administrative obligations are no exception.

To this end and in the framework of the Better Regulation initiatives (due regard being had to the desirability of maintaining a stable corpus of legislation), the Commission has called for regular review of existing administrative obligations at EU and Member States levels and for taking into account the overall benefits and costs when preparing new legislation and simplifying existing one³. Regulatory costs, of which administrative obligations are just one element, must be analysed in a broad context, encompassing the economic, social and environmental costs and benefits of regulation. Regular review and integrated analysis should be considered by all as key components of Better Regulation.

2. QUANTIFICATION OF ADMINISTRATIVE BURDEN IN THE EU – THE STATE OF PLAY

The EC Treaty provides that the Commission should “take duly into account the need for any burden, whether financial or administrative, falling upon the Community, national governments, local authorities, economic operators and citizens to be minimised and proportionate to the objective to be achieved” (Point 9 - Protocol on the application of the principles of subsidiarity and proportionality).

In order to comply with the proportionality principle, the Commission already appraises the impact of proposed measures in term of administrative burden and evaluates it when simplifying existing legislation, but does not have a single quantitative approach for doing so. Analysis needs to follow basic rules, but will naturally differ from case to case not least because the methodologies for obtaining data need to differ from case to case.

Some efforts to minimise administrative burden have not involved quantification. In those cases, complaints and suggestions from targeted groups are gathered through public consultation; a high level group of experts then reviews the regulatory framework and makes recommendations for simplification⁴.

In its 16 March 2005 Communication on Better Regulation for Growth and Jobs, the Commission, underlying that weighting the costs of public action was not fundamentally "anti-regulation", announced its intention to make further progress on the issue and explore the possibility of developing a common approach at EU level (COM(2005)97). The Staff Working Document annexed to the Communication outlined a possible approach and launched the pilot phase underpinning the present Communication⁵.

The need for further progress was also underlined by the European Council and the Council on various occasions, as well as by the Council Presidency⁶. The European Parliament, among other things, is preparing an own-initiative report on minimising administrative costs imposed by EU legislation.

³ COM(2005)24.

⁴ See for instance the work on the cumulative regulatory burden put on the automotive sector (<http://europa.eu.int/comm/enterprise/automotive/pagesbackground/competitiveness/cars21.htm>).

⁵ ‘Minimising administrative costs imposed by legislation’, SEC(2005)175.

⁶ In particular, administrative burden figures prominently in the Joint Statement “Advancing regulatory reform in Europe” signed on 7 December 2004 by the six Member States successively holding the presidency of the Council from 2004 to 2006 (Ireland, the Netherlands, Luxembourg, the UK, Finland and Austria).

As for Member States, a growing number of them are showing interest in quantifying the costs of administrative burden. There is a clear convergence towards the so-called Standard Cost Model (SCM). The Model, first introduced in the Netherlands in 2002, has been designed as a tool to measure the progress of administrative burden reduction programmes at national level. It consists of a detailed assessment of individual pieces of legislation, mainly based on direct interviews of enterprises and expert judgments (a micro assessment approach). Data on the time and labour costs needed to comply with each information requirement imposed by a legislative act, as well as on the number of entities concerned have to be compiled.

Two Member States, the Netherlands and Denmark, have assessed their entire legislation in force and are now assessing systematically all new measures. The UK and the Czech Republic are preparing to follow suit with their own baseline measurement. At least seven other Member States have taken some steps by testing the SCM or are planning to do so in one or two sectors. One Member State, Germany, is an observer in the informal network set up by SCM users and testers. The informal network has been turned into an international steering group in London on 19 September 2005.

On the other hand, as of October 2005, thirteen other Member States do not appear to quantify administrative costs or envisage it on a test basis. Some have even indicated that they prefer focusing their efforts on concrete simplification measures instead.

3. FEASIBILITY OF AN EU COMMON METHODOLOGY

Assessing the findings of the pilot phase and the study of quantification efforts at Member State level is to a certain extent like deciding whether the glass is half full or half empty. For example, a number of methodological points could not be fully addressed and there were problems with the availability and accuracy of basic data.

The Commission opts for the optimistic line and concludes positively on feasibility of an EU common methodology, broadly speaking. This positive conclusion, however, depends on several conditions, namely that (1) all EU Institutions and Member States use the same definition, core equation and reporting sheet when assessing administrative costs at EU level; (2) the EU common methodology is applied in a proportionate manner, (3) that more Member States coming from all parts of the Union are willing to contribute and (4) adequate level of staffing and financial resources are available within the Commission for assessment and evaluation.

The EU common methodology must be applied in a proportionate manner. It should only be applied when the scale of the administrative obligations imposed by an EU act justifies it and the effort of assessment should remain proportionate to the scale of the administrative costs imposed by the legislation. Besides, adequate flexibility must be allowed when filling in the common reporting sheet.

As for the number and the distribution of contributing Member States, evidence gathered through pilot projects suggests that they do not as yet provide a sufficient basis for assessing costs at EU level. Ideally, a majority of Member States should be willing and able to provide data (it is difficult to be more specific on the necessary critical mass because that is likely to vary from sector to sector). Whilst Member States should be encouraged to contribute, the

Commission will of course retain responsibility for judging the costs of its proposals on the basis of its assessment of available evidence⁷.

A minimalist approach would only require that contributing Member States to provide data in a standardised manner on the labour costs, time and number of operators affected by an EU (proposed) measure and its transposition into national legislation. Member States would not necessarily have to apply the EU common methodology to assess their purely national legislation. The coexistence of very different methodologies at national and EU level would however increase significantly the overall assessment costs for Member States in terms of duplication and other efficiency losses⁸. Convergence between national and EU methodologies would moreover ensure easy interoperability among databases and would offer greater economies of scale in term of data collection.

The EU common methodology would gain from clarification on a number of technical issues listed in the Staff Working Document in Annex (section 4.1). Optimisation efforts however should not be considered as a prerequisite for the introduction of a common methodology. Embarking on a learning by doing process would even help to solve these issues.

4. THE ADDED-VALUE OF AN EU COMMON METHODOLOGY

On the basis of the findings of the pilot phase and the study of quantification efforts at Member State level, and although considerable optimisation work remains to be done, notably at Member States' level, the Commission concludes that:

- (1) specific cost-based quantification helps in assessing measures from the point of view of those affected and taking into account the distributional effects of a measure;
- (2) specific cost-based quantification contributes to regulatory transparency (quantifying costs helps to make trade-offs more transparent, provided that the benefits including longer term benefits are also investigated);
- (3) specific cost-based quantification often provides a relevant indicator in particular for prioritising simplification work and monitoring progress in reducing administrative burdens, provided that figures are put in proper perspective and methodological limitations properly highlighted;
- (4) quantification facilitates communication (communicating on simplification efforts is more effective when quantified results are provided; this is particularly true for the Union because, many EU measures being technical, their titles often mean very little for the wide public);

⁷ To do otherwise could create significant difficulties, especially for ex-ante assessments where Member States may not have the same understanding of the proposal, not have decided on how to specify administrative procedures or have no data, and could not be expected to provide estimates in a timely manner as the proposal is re-shaped during its development phase.

⁸ The coexistence of – incompatible – methodologies at EU and national level would increase assessment costs for the following reasons. Member States using a different definition or a different method of quantification would not have at hand the data required for EU-wide assessment, obliging them to organise specific data collection. Sharing the same definition and the same approach to quantification means that new comers can assess administrative burden in their country by building on existing data in similar countries.

- (5) an EU common methodology would facilitate the comparison of performance and the identification of best practices;
- (6) an EU common methodology would ensure that national data can be easily added up in view of assessing individual acts and/or cumulative burden at sectoral level.

There would therefore be net added value provided that an EU common methodology would not be at the expense of analysis of other impacts.

5. OUTLINE OF AN EU COMMON METHODOLOGY FOR ASSESSING ADMINISTRATIVE COSTS IMPOSED BY LEGISLATION

A common methodology does not mean having no flexibility at EU or national level. A methodology is made of several building blocks. In order to have an EU common methodology, some must be used by all, others can be optional. EU institutions and Member States should remain free to introduce specific features in their methodology for assessing administrative burden imposed by legislation as long as the resulting figures (1) can be easily compared and (2) can be easily and reliably added up in view of assessment of cumulative burdens. This is in particular true for data collection methods. The outline presented in the Staff Working in Annex further elaborates on other optional or flexible elements that need to be preserved.

However, as already mentioned, the Commission considers that there can be no EU common methodology without the three following building blocks: a common definition, a common core equation and a common reporting sheet. The pilot phase has tentatively confirmed the adequacy of the definition, core equation and reporting sheet presented in the Staff Working Document in Annex.

Assessing net administrative costs as proposed by the Commission (new costs imposed by an act minus costs suppressed by the same act be it at EU or Member State level) seems preferable for a number of reasons. It would clearly show the extent of simplification efforts and dispel the impression that an EU obligation automatically means ‘new’ costs. Moreover, it would be consistent with the Commission’s impact assessment guidelines and national RIA (Regulatory Impact Assessment) manuals, as well as being in line with the first OECD guiding principle for regulatory quality and performance. Finally a net cost approach would have a clear advantage for those Member States which assess administrative burden systematically. First, with net figures, there is no need to go through costly periodical assessment of the entire legislation into force. Secondly, consolidated figures can be produced at any time which means that progress can be monitored on an ongoing basis (no need to wait for the general stocktaking exercise to know how total administrative burden evolved since the initial baseline measurement).

As the proposed EU model is building for a large part on the Standard Cost Model, adjustment costs for users and testers would be minimal.

It should be possible to add other common elements to simplify the assessment and enhance the comparison and addition of data. This needs to be further studied with the Council and the Member States.

6. NEXT STEPS

For the short term, the Commission:

- (1) intends to include the methodological building blocks tentatively validated by the pilot phase (i.e. the common definition, the common core equation and the common reporting sheet), in the Commission's impact assessment guidelines and evaluation guidelines, with actual implementation and use being subject to
 - (a) the principle of proportionate analysis, the Commission retaining responsibility for judging the costs of its proposals;
 - (b) the availability of sufficient, reliable and representative data, compatible with the EU common methodology. In this context Member States are invited to provide such data as appropriate;
 - (c) the availability of an adequate level of staffing and financial resources
- (2) invites the Member States, meeting within the Council, to reach an agreement with the Commission on a common methodology, building on the results of the Commission's pilot phase;

For the longer term, the Commission proposes:

- (3) to examine, with the help of the high level group of national experts on better regulation, how to solve pending methodological issues;
- (4) drafting of an EU operational manual in consultation with Member States;
- (5) exploring, on a test basis, whether the EU common methodology can meaningfully be used to assess cumulative burden at sectoral level;
- (6) to open inter-institutional negotiations with a view to including the future EU common methodology in the Inter-Institutional Agreement on Better Law-making.